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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

2009 OCT 26 P 3:06

Arizona Corporation Commission

DOCKETED

OCT 26 2009

AZ CORP COMMISSION  
DOCKET CONTROL

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In the matter of:

SIR MORTGAGE & FINANCE OF  
ARIZONA, INC., an Arizona corporation,

GREGORY M. SIR (a/k/a "GREG SIR"), and  
ERIN M. SIR, husband and wife,

Respondents.

DOCKET NO. S-20703A-09-0461

**SECURITIES DIVISION RESPONSE TO  
RESPONDENTS' MOTION TO DISMISS**

The Securities Division ("Division") of the Arizona Corporation Commission responds to respondents' Motion to Vacate Temporary Order to Cease and Desist ("Motion") and requests that it be denied.

Respondents' unprecedented request for the Administrative Law Judge ("ALJ") to summarily vacate the September 24, 2009 Temporary Order to Cease and Desist ("TC&D") and to support their continued offer and sale of unregistered securities in violation of the Arizona Securities Act ("Act") is not supported by the plain language of the Act, case law interpreting the Act or the policy purpose underlying the Act.

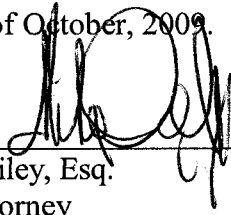
Dismissal at this stage of litigation without having considered evidence would harm the Arizona investing public, especially in light of: (1) the fraud allegations specified in the TC&D; and (2) the large dollar amounts at issue. (*See e.g.*, TC&D, ¶¶38-41). The Division respectfully requests the ALJ to set the evidentiary hearing requested by respondents.<sup>1</sup>

<sup>1</sup> Undersigned requested respondents' counsel to agree to ask an evidentiary hearing date on October 19, 2009. To date, he has not responded. The Division believes that it can present the evidence identified in the TC&D in approximately two to three days.

1 The letter attached to respondents' Motion lacks merit and ignores vital facts alleged in  
2 the TC&D including, without limitation, that: (1) respondents share all monthly loan payments  
3 with investors (vertical privity); (2) investors pay their money to respondents, who then pool  
4 their money together to fund a single loan (horizontal privity); (3) respondents retain interests in  
5 the fractionalized notes and/or deeds of trust assigned to often multiple investors (vertical  
6 privity); (4) each investment involves several deeds of trust and fractionalization precluding  
7 reliance on A.R.S. § 44-1843(A)(10); and (5) the investments are passive and involve a large  
8 volume of services provided by respondents for investors through even the resolution of bad loan  
9 investments. Respondents cite no authority for the proposition that the Department of Financial  
10 Institutions has exclusive jurisdiction over claims against licensed mortgage bankers; there is  
11 none. Similarly, the State Bar does not have exclusive jurisdiction over claims against attorneys,  
12 and the State Board of Accountancy does not have exclusive jurisdiction over claims against  
13 certified public accountants.

14 Respondents have a duty to comply with the Act. Regarding the public welfare,  
15 respondents' Motion appears to be based on the proposition that they cannot operate their  
16 business without a constant influx of investor money. Indeed, they continued to sell their  
17 investments despite knowledge of the Division's investigation. Based on the foregoing, the  
18 Division requests that the Motion be denied.

19 **RESPECTFULLY SUBMITTED** this 26<sup>th</sup> day of October, 2009.

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21   
22 Mike Dailey, Esq.  
23 Staff Attorney  
24 Securities Division  
25 1300 West Washington, Third Floor  
26 Phoenix, Arizona 85007

1 **ORIGINAL AND THIRTEEN (13) COPIES**  
2 **of the foregoing filed this 26<sup>th</sup> day of**  
3 **October, 2009 with:**


4 Docket Control  
5 Arizona Corporation Commission  
6 1200 West Washington  
7 Phoenix, Arizona 85007

8 **Copy of the foregoing hand-delivered this 26<sup>th</sup> day of**  
9 **October, 2009 to:**

10 Marc E. Stern, Administrative Law Judge  
11 Arizona Corporation Commission  
12 Hearing Division  
13 1200 West Washington  
14 Phoenix, Arizona 85007

15 **Copy of the foregoing mailed this 26<sup>th</sup> day of**  
16 **October, 2009 to:**

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